

From: "Tom Luster" <tluster@coastal.ca.gov>
To: "Brian Kelley" <BKelley@waterboards.ca.gov>
Date: 2/9/2009 1:21 PM
Subject: RE: Info for Feb. 11 hearing re: Poseidon

Hi Brian,

I've provided some answers [in brackets] below -- please let me know if you'd like more details.

Tom L.

-----Original Message-----

From: Brian Kelley [mailto:BKelley@waterboards.ca.gov]
Sent: Monday, February 09, 2009 12:17 PM
To: Tom Luster
Subject: Info for Feb. 11 hearing re: Poseidon

Tom,

Thanks for the detailed status report from the Coastal Commission's perspective. That's very helpful.

And yes, the amount of information we have received for this item is close to a Regional Board record for volume of paper.

I think I know the answer to these questions, but I would like to ask you these for confirmation:

Did the Coastal Commission have any concerns with Poseidon's determination of the amount of impacts due to impingement and entrainment? Or did the Commission just accept the total impact assessment without getting into the details of the number and mass of species killed? Or did the Commission hire an expert to review the data and confirm the impact numbers submitted by Poseidon?

[Re: impingement, the Commission concurred with the EIR findings that described a de minimis impact. With entrainment, however, the Commission required additional information and mitigation above what the EIR had described and what Poseidon had proposed. Here's a simplified version of the more detailed story -- when the Commission approved Poseidon's CDP in Nov 07, it had not yet seen the basis for Poseidon's proposed 37-acre mitigation at San Dieguito, so required Poseidon to submit its entrainment study. Poseidon submitted it in Spring 08, and we hired Pete Raimondi to review it. He found that Poseidon's 37-acre proposal was based on a 50% certainty of fully mitigating impacts -- that is, there would be at least a 50% chance that creating or restoring 37 acres of fully functioning wetlands of the same type as found in Agua Hedionda would fully mitigate for Poseidon's entrainment effects. He instead recommended that the Commission base its mitigation requirement on having between 80 and 95% certainty that the entrainment would be fully mitigated -- this would require roughly 55 to 68 acres of fully functioning creation/restoration. Both Pete and the SONGS science team thought the San Dieguito site Poseidon was proposing at that time would be an appropriate place for this mitigation to occur. However, between

the time of Pete's review and the Commission's review of the proposed mitigation plan, Poseidon modified its proposal to consider sites other than San Dieguito for mitigation. Pete and the SONGS team thought that other sites within the So Cal Bight could be acceptable as long as the resulting mitigation was similar to the type of wetlands found in Agua Hedionda.

The Commission ended up adopting the 85% certainty level (i.e., 55.4 acres), and allowing consideration of other sites. As I mentioned earlier, Poseidon is required to come back with its proposed site(s) (up to two) and preliminary restoration plan for Commission (not just staff) review and approval, so the Commission will have an opportunity at some point to decide which sites(s) will be acceptable.

Hope this makes sense...

Tom L.]

I think this would be good information for the Regional Board to consider.

Thanks again for your help.
Brian

>>> "Tom Luster" <tluster@coastal.ca.gov> 2/9/2009 11:22 AM >>>

Hi Brian,

Wow, that's quite a load of documents for the Thursday hearing! I have not reviewed them all, but did a quick review of some of them and want to provide you with a couple of items, in case these issues come up.

* Status of coastal development permit (CDP): We have not yet issued Poseidon's CDP for the facility, as Poseidon has not yet submitted some items we need prior to issuance. Of those "prior to issuance" requirements (see the Commission's Special Conditions #2 & 3), Poseidon must submit a copy of its State Lands Commission lease (which I believe Poseidon has not yet obtained), as well as a lease restriction showing Poseidon added the Coastal Commission conditions to its property lease.

* Timing: Once we issue the CDP, Poseidon will have up to 10 months to submit its proposed mitigation site(s) and preliminary restoration plan for Commission review and approval. Within two years of CDP issuance, Poseidon must submit a complete CDP application for Phase I to restore at least 37 acres of wetlands.

* Non-conformity of Poseidon's proposed resolution with Commission requirement: The Commission's mitigation approval also included a Phase II requirement that Poseidon must implement within five years of issuance of the Phase I CDP. Please note that Item #25 of Poseidon's proposed resolution (see below) does not conform to the Commission's requirement. This item suggests that Poseidon be required to implement its Phase II mitigation after the power plant stops operating or operates with less than 15% of the water Poseidon needs. Poseidon suggested this same option to the Coastal Commission; however, the

Commission decided against it and instead required Poseidon to submit a complete CDP application for its Phase II mitigation no less than 5 years after issuance of the Phase I CDP. If the Board considers adopting this resolution, I recommend Item #25 be modified to be consistent with the Commission's requirement.

[Item #25 of Poseidon's Proposed Resolution states: "If the EPS stops operating or meets less than 15% of COP's intake needs, Phase II of the MLMP applies, which requires an additional analysis of whether new or developing technologies have become available and are feasible to reduce entrainment. A new entrainment analysis will be conducted at that time to assess whether such technologies should be implemented, and/or if additional mitigation is necessary. If additional mitigation is necessary, Poseidon may propose additional wetland mitigation acreage of up to 18.4 acres or the assumption of dredging obligations for Agua Hedionda Lagoon in exchange for mitigation credit. Poseidon may elect to construct 55.4 acres of wetlands during Phase I."]

* Mitigation location: I don't know if this will come up, but please note that we have not yet received from Poseidon an indication of which site(s) it proposes to use for mitigation. The only site considered thus far -- San Dieguito Lagoon -- is apparently not available.

Hope this is of use. As I said, I have not reviewed all the documents posted on the Regional Board site and have not addressed some of the statements and characterizations within them, but wanted to get this to you quickly -- please let me know if you have questions.

Tom L.